

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JASON R. WHITE,

Plaintiff,

vs.

CIV 12-00988 MV/KBM

CITY OF ALBUQUERQUE,
ALBUQUERQUE POLICE
OFFICER J. McRAE, in his official
and individual capacity; ROBERT
METZGER (sic), J. RICHARDS,
John Doe,

Defendants.

ORDER GRANTING IN PART
DEFENDANT CITY OF ALBUQUERQUE'S
FIRST MOTION TO COMPEL AND REQUEST FOR SANCTIONS

THIS MATTER comes before the Court on City Defendant's First Motion to Compel and Request for Sanctions. *Doc. 46.* In its motion, the City seeks to compel Plaintiff to list any contact information he has for his named witness - Tori Brickham - as required by Fed. R. Civ. P. 26(a)(1)(A)(i). The City also requests that this Court order sanctions as it deems appropriate given Plaintiff's failure to provide that required information.

Plaintiff, who appears *pro se*, did not file a response to Defendant's motion within the time to respond. According to our district's local rules, "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ 7.1(b). Thus, the motion could be granted on that basis alone.

However, the City failed to determine whether Plaintiff concurred in this motion. Such requests for concurrence can sometimes obviate the need for Court intervention. Local Rule 7.1(a) specifically provides that a movant must determine whether a motion is opposed, "and a motion that omits recitation of a good-faith request for concurrence may be summarily denied.

D.N.M.LR-Civ. 7.1(a). Here, the City specifically states that it did not seek Plaintiff's concurrence, apparently under the misconception that it was unnecessary in all pro se cases. In fact, it is only in *pro se inmate* cases that the movant need not determine opposition to a motion. See D.N.M.LR-Civ. 7.1(a). Because that exception does not apply here, the City is cautioned that future failures to seek the concurrence of Plaintiff will likely result in summary denial of its motions.

IT IS THEREFORE ORDERED that City Defendant's First Motion to Compel and Request for Sanctions (Doc. 46) is hereby granted in part. The Plaintiff will provide any contact information he has with regard to witness Tori Brickham within five (5) days of the entry of this Order. Although the City's request for sanctions is denied at this time, Plaintiff is cautioned that future failures to comply with the federal and local rules of discovery and orders of this Court could result in the imposition of sanctions, including dismissal of the lawsuit with prejudice. See *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992).



UNITED STATES CHIEF MAGISTRATE JUDGE